

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 592 – SB 1135

April 1, 2015

SUMMARY OF ORIGINAL BILL: Increases, from 24 x 18 inches to 48 x 36 inches, the size of a required notice that a metal recycling facility must post regarding prohibited sales, transfers, or conveyances.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

SUMMARY OF AMENDMENT (005547): Deletes all language after the enacting clause.

Authorizes a law enforcement officer to arrest someone without a warrant when the person has committed a misdemeanor though not in the officer's presence.

Authorizes a law enforcement officer to arrest someone without a warrant when a misdemeanor has in fact been committed and the officer has reasonable cause for believing the person arrested has committed the misdemeanor.

Authorizes a law enforcement officer to issue a citation in lieu of continued custody to an arrested individual for simple possession or casual exchange of a controlled substance or for possession of drug paraphernalia if the officer seized the controlled substance, drug paraphernalia, and any weapons on the person arrested; the officer does not believe there is reasonable likelihood that the arrested person will fail to appear in court; and the arrested person does not have any outstanding arrest warrants and does not have a prior drug conviction.

Authorizes a magistrate issuing an arrest warrant or capias for a person who committed either simple possession or casual exchange of a controlled substance or possession of drug paraphernalia to determine whether the person is to be arrested and taken into custody or arrested and issued a citation in lieu of continued custody.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Expenditures – \$102,000 Highest Projected Cost of the Next 10 Years/Incarceration*

Assumptions for the bill as amended:

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- Under current law, a law enforcement officer cannot arrest a person for a misdemeanor offense without a warrant unless the offense was committed in the officer's presence. Tenn. Code Ann. § 40-7-103; *Pesterfield v. Vickers*, 43 Tenn. 205, 209-10 (1866); *Hurd v. State*, 108 S.W. 1064, 1067 (Tenn. 1907); *Cf. State v. Ash*, 12 S.W.3d 800, 804-05 (Tenn. Crim. App. 1999).
- The bill as amended would authorize law enforcement officers to arrest a person without a warrant for a misdemeanor committed outside of the officer's presence or for a misdemeanor that the officer has reasonable cause to believe was committed by the person arrested.
- The bill as amended will increase the number of misdemeanor arrests and convictions because it broadens the ability of law enforcement officers to arrest persons suspected of having committed misdemeanor offenses. The Tennessee Law Enforcement Training Academy (TLETA) and the Peace Officers Standards and Training (POST) confirm that the bill as amended widely broadens an officer's ability to charge someone for misdemeanors committed outside their presence.
- Because some misdemeanor offenses, particularly simple possession and casual exchange of a controlled substances, can be enhanced to a felony for a third and subsequent conviction, the bill as amended will increase the number of admissions into the custody of the Department of Correction (DOC).
- There is insufficient data relative to the number of misdemeanor offenses that go unpunished because law enforcement officers cannot make a warrantless arrest. There is also insufficient data relative to the number of these offenses that go unpunished that would be a person's third or subsequent conviction, and, therefore, would be enhanced to a felony.
- However, it is reasonable to assume that because the bill as amended greatly broadens law enforcement officers' ability to make warrantless arrests and charge someone for misdemeanors that the bill as amended will result in at least three admissions per year for third or subsequent misdemeanor offenses being enhanced to felonies.
- Most misdemeanor offenses that are enhanced to a felony because they are third or subsequent convictions are enhanced to Class E felonies.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect the fiscal impact of this legislation.
- Statistics from the DOC show that the average time served for a Class E felony is 1.41 years (515 days).
- According to the DOC, the average operating cost per offender per day for calendar year 2015 is \$66.03.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on an offender serving a 1.41 years (515 days) for a total of \$34,005 (\$66.03 x 515 days). The cost for three offenders is \$102,015 (\$34,005 x 3).
- The bill as amended authorizes citations to be issued in lieu of continued custody, which could reduce the time a defendant serves in local custody awaiting bail or trial. But the Tennessee Sheriffs' Association reports that it is common practice to issue a citation in lieu of simple possession and casual exchange cases. It is assumed that the bill as amended will not significantly decrease local incarceration costs.

- The bill as amended will increase the misdemeanor caseloads of the courts, district attorneys, and public defenders. It is assumed that the increase will not be significant enough to require any additional attorneys or staff.

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in dark ink, appearing to read "Jeffrey L. Spalding", written in a cursive style.

Jeffrey L. Spalding, Executive Director

/trm